



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

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ISCR Case No. 15-05253

Applicant for Security Clearance

Appearances

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

10/14/2016

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to show that he has a track record of financial responsibility, and that his financial problems are under control. He failed to mitigate the Guideline F (financial considerations) security concerns. Clearance is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on January 12, 2015. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant's eligibility for a clearance. On December 23, 2015, the DOD issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on January 18, 2016, and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM), dated February 18, 2016, was provided to Applicant by transmittal letter with that same date. Applicant received the FORM on February 26, 2016. He was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the

¹ DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

concerns. Applicant did not respond to the FORM or submit any additional evidence. The case was assigned to me on October 3, 2016.

Findings of Fact

In Applicant's response to the SOR, he admitted the three SOR factual allegations. He provided no extenuating and mitigating information. Applicant's SOR admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 54-year-old employee of a defense contractor. He graduated from high school in 1980. He has never been married and has no children. Applicant enlisted in the Army in 1985, and served on active duty until he retired with the rank of sergeant first class (E-7) in 2006. According to his 2015 SCA, the Office of Personnel Management (OPM), denied Applicant a top secret clearance in 1988. He was granted a secret level clearance in 2005.

After his retirement, Applicant worked as a security manager for a private company for about a year. He was unemployed four months during mid-to-late 2007. He was hired by his current employer, a government contractor, in December 2007. It is not clear whether his continued employment is contingent on his eligibility for a clearance. There are no allegations or evidence of any rule or security violations.

Section 26 (Financial Record) of Applicant's January 2015 SCA asked him to disclose whether in the past seven years he had: filed a bankruptcy petition; failed to file or pay his federal and state taxes; any financial problems, including delinquent or in-collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; had judgments filed against him; and whether he was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts during the last seven years. Applicant answered "no" and failed to disclose any of the delinquent debts alleged in the SOR.

The subsequent security clearance background investigation revealed the three delinquent accounts alleged in the SOR. Applicant's admissions to the SOR allegations and the January 2015 credit report (Item 4) establish the three debts alleged in the SOR. SOR ¶ 1.a alleged a charged off balance of \$8,669 for a repossessed motorcycle that Applicant purchased in 2009 and became delinquent in 2012. SOR ¶¶ 1.b and 1.c alleged medical debts in collection for services provided in 2013 and 2014, totaling about \$23,541.

Applicant provided no information to explain why his accounts became delinquent. He presented no evidence to show that he has been in contact with his creditors, or that he attempted to settle, pay, or otherwise resolve his delinquent debts. I note, however, that the FORM credit report (submitted by the Government) shows that Applicant had 42 accounts, all of which were in good standing (paid or "as agreed"), except for the three accounts alleged in the SOR.

Applicant provided no information about his current financial position. He did not provide any information about his income, monthly expenses, and whether his current income is sufficient to pay his current living expenses and debts. He did not provide any evidence about whether his two medical debts were covered by medical insurance, such as TRICARE. There is no information to indicate whether he recently participated in financial counseling or whether he follows a budget.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

Under Guideline F, the security concern is that failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's history of financial problems is documented in his credit report and his SOR response. The evidence establishes the three delinquent accounts alleged in the SOR, totaling over \$32,000. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the financial considerations mitigating conditions apply. Applicant's financial problems are recent and ongoing. He presented no evidence to show that his financial problems are under control, and that his debts were incurred under circumstances unlikely to recur. Applicant presented no evidence of efforts taken to remain in contact with his creditors, or of efforts he has taken to pay or resolve his delinquent debts.

Based on his 2015 SCA, Applicant has possessed a security clearance since 2005. He served in the military 21 years and held the rank of sergeant first class (E-7). Because of his time in the service and working for a defense contractor while possessing a clearance, Applicant knew or should have known about the Government's concerns about clearance holders having financial problems.

Applicant submitted his SCA in January 2015, and disclosed no financial problems or delinquent debts. He was issued the SOR in December 2015, and was made aware of the Government's financial considerations security concerns. Applicant was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation; however, he failed to provide a reasonable explanation for his failure to address his delinquent debts since he acquired them.

Applicant also failed to establish that he has sufficient income to keep his debts in current status and to continue making progress paying her delinquent debts. In sum, Applicant did not submit sufficient evidence to show financial responsibility.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG

¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 54-year-old employee of a defense contractor. He served in the Army 21 years and retired as a sergeant first class (E-7). He has worked for a defense contractor since 2007. Apparently, he has possessed a security clearance during his employment.

Applicant submitted no evidence of payments to the SOR creditors or of efforts to resolve his debts. There is insufficient evidence of progress addressing Applicant's financial problems. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problems are being resolved, or are under control. Applicant failed to establish that he has a track record of financial responsibility.

It is well settled that once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that grant or reinstatement of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards resolving his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his worthiness for access to classified information. For the above stated reasons, I find that the financial considerations security concerns are not mitigated.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a-1.c:	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge